

EXHIBIT E



**First American Title Insurance Company
National Commercial Services**

**2101 Fourth Avenue, Suite 800
Seattle, WA 98121**

April 25, 2008

OM Everett Inc.

Title Officer: Lance A. Lewis
Phone: (206)615-3207

Order Number: NCS-349312-WA1

Escrow Officer: Donna F. Koerber
Phone: (206)615-3021

Buyer: OM Everett Inc.

Property: master file for everett project, Everett, WA

Attached please find the following item(s):

A Policy of Title Insurance

Thank You for your confidence and support. We at First American Title Insurance Company maintain the fundamental principle:

Customer First!

First American Title Insurance Company

Policy of Title Insurance



ISSUED BY

First American Title Insurance Company

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a CA corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

First American Title Insurance Company

BY

PRESIDENT

ATTEST

SECRETARY



**SECOND
PROFORMA POLICY
SCHEDULE A**

This is a Pro Forma Policy furnished to or on behalf of the party to be insured. It neither reflects the present status of title, nor is it intended to be a commitment to insure. The inclusion of endorsements as a part of the Pro Forma Policy in no way evidences the willingness of First American Title Insurance Company to provide any affirmative coverage shown therein.

There are requirements that must be met before a final policy can be issued in the same form as this Pro Forma Policy. A Commitment to insure setting forth these requirements should be obtained from the Company.

Amount of Insurance: \$To be determined

Policy Number: NCS-349312-WA1

Date of Policy: Date and time of recording at

1. Name of insured:

OM Everett Inc.

2. The estate or interest in the land which is covered by this policy is:

Fee Simple

3. Title to the estate or interest in the land is vested in:

OM Everett Inc., a Washington corporation

4. The land referred to in this policy is described as follows:

Real property in the City of Everett, County of Snohomish, State of Washington, described as follows:

LOTS 15, 16, 19, and 21 THROUGH 29, INCLUSIVE, AS DESCRIBED AND SHOWN ON CITY OF EVERETT BOUNDARY LINE ADJUSTMENT NO. 08-004, FILED UNDER AUDITOR'S FILE NO. 200804085006, RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

PARCEL 31:

ALL THAT PORTION OF BLOCK 41 OF J.S. SINES ACRE TRACTS AS PER PLAT RECORDED IN VOLUME 4, PLAT, PAGE 11, SNOHOMISH COUNTY RECORDS, WHICH LIES NORTHWESTERLY OF A LINE PARALLEL TO AND DISTANT 72 FEET SOUTHEASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY RIGHT OF WAY LINE OF THE FORMER NORTHERN PACIFIC RAILWAY COMPANY (NOW BURLINGTON NORTHERN INC.), AS NOW ESTABLISHED.

SITUATE IN SNOHOMISH COUNTY, WASHINGTON.

PARCEL 32B:

THAT PORTION OF LOT 17 OF BOUNDARY LINE ADJUSTMENT RECORD OF SURVEY RECORDED UNDER RECORDING NO. 200608215004 AND BOUNDARY LINE ADJUSTMENT NO. 05-008

RECORDED UNDER RECORDING NO. 200608210287, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, LYING SOUTH OF THE EASTERLY EXTENSION OF THE SOUTH LINE OF 36TH STREET EXTENDED EASTERLY FROM THE NORTHEAST CORNER OF BLOCK 14 TO THE NORTHWEST CORNER OF BLOCK 15, ALL AS SHOWN ON J.S. SINES ACRE TRACTS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 11, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;
EXCEPT ANY PORTION LYING WITHIN THAT PORTION CONVEYED TO THE CITY OF EVERETT BY DEED RECORDED UNDER RECORDING NO. _____.

PARCEL 33:

ALL THAT PORTION OF BLOCK 30 OF J.S. SINES ACRE TRACTS AS PER PLAT RECORDED IN VOLUME 4, PLAT, PAGE 11, SNOHOMISH COUNTY RECORDS, WHICH LIES NORTHWESTERLY OF A LINE PARALLEL TO AND DISTANT 50 FEET SOUTHEASTERLY, MEASURED AT RIGHT ANGLES FROM THE EASTERLY RIGHT OF WAY LINE OF THE FORMER NORTHERN PACIFIC RAILWAY COMPANY (NOW BURLINGTON NORTHERN INC.), AS NOW ESTABLISHED.

SITUATE IN SNOHOMISH COUNTY, WASHINGTON.

PARCEL 35:

ALL OF BLOCK 29 OF J.S. SINES ACRE TRACTS AS PER PLAT RECORDED IN VOLUME 4, PLAT, PAGE 11, SNOHOMISH COUNTY, RECORDS.

SITUATE IN SNOHOMISH COUNTY, WASHINGTON.

PARCEL 36:

ALL THAT PORTION OF BLOCK 16 OF J.S. SINES ACRE TRACTS AS PER PLAT RECORDED IN VOLUME 4, PLAT, PAGE 11, SNOHOMISH COUNTY RECORDS, WHICH LIES WESTERLY OF A LINE PARALLEL TO AND DISTANT 30 FEET EASTERLY, MEASURED AT RIGHT ANGLES, FROM THE EASTERLY RIGHT OF WAY LINE OF THE FORMER NORTHERN PACIFIC RAILWAY COMPANY (NOW BURLINGTON NORTHERN INC.) AS NOW ESTABLISHED.

SITUATE IN SNOHOMISH COUNTY, WASHINGTON.

PARCEL 37:

TRACT 16, OF J.S. SINES ACRES TRACTS, ACCORDING TO PLAT RECORDED IN VOLUME 4 OF PLATS, PAGE 11, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;

EXCEPT THE WESTERLY 30 THEREOF.

SITUATE IN SNOHOMISH COUNTY, WASHINGTON.

PARCEL 38:

ALL THAT PORTION OF BLOCK 15 OF J S SINES ACRE TRACTS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 11, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, THAT LIES EASTERLY OF A LINE DRAWN PARALLEL TO AND DISTANT 50 FEET EASTERLY MEASURED AT RIGHT ANGLES FROM THE WESTERLY SIDE LINES OF SAID BLOCK.

EASEMENT PARCEL A:

AN EASEMENT FOR INGRESS, EGRESS AND CONSTRUCTION AS ESTABLISHED BY RECIPROCAL
TEMPORARY CONSTRUCTION EASEMENTS AGREEMENT RECORDED UNDER
RECORDING NO. _____.

SITUATE IN SNOHOMISH COUNTY, WASHINGTON.

APN:

SCHEDULE B

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. 2008 General Property Taxes, not yet due and payable.
2. Facility Charges, if any, including but not limited to hook-up, or connection charges and latecomer charges for water or sewer facilities of the City of Everett as disclosed by instrument recorded August 23, 1984 under recording no. 8408230225.
3. Easement, including terms and provisions contained therein:
Recording Information: November 22, 1974 under Recording No. 2365860
In Favor of: Public Utility District No. 1 of Snohomish County
For: an underground system and distribution lines
Affects: Lots 26-29
4. Reservations and exceptions, including the terms and conditions thereof:
Reserving: Minerals
Reserved By: Burlington Northern & Santa Fe Railway Company, a Delaware corporation (formerly Burlington Northern Railroad Company)
Recorded: July 21, 1997
Recording Information: 9707210452

(Affects Lot No.'s 16, 21, 22, 23, 25, 26, and 29)
5. Terms, Covenants, Conditions and Restrictions of Consent Decree entered in Snohomish County Superior Court Cause No. 01-2-03640-6 dated April 2, 2001, and amended by Amendment No. 1 to Consent Decree filed April 23, 2008, entered into by the Washington State Department of Ecology and the City of Everett, and Restrictive Covenant Everett Landfill recorded under recording no. _____.

(Affects Lot No. 16 and 21-29)
6. Covenants, conditions, restrictions, reservations and/or easements:
Recorded: August 25, 2006
Recording No.: 200608250618

(Affects Lot No. 15 and 19)
7. A document entitled "Operating Easement Agreement", executed by and between City of Everett, a Washington municipal corporation and BNSF Railway Company (formerly known as The Burlington Northern and Santa Fe Railway Company), a Delaware corporation recorded August 25, 2006, as Instrument No. 200608250621 of Official Records.

8. Right of the State of Washington in and to that portion, if any, of the property herein described which lies below the line of ordinary high water of the Snohomish River.
9. Any question as to the true location of the lateral boundaries of the tidelands.
10. Any question that may arise due to the shifting and/or changing in the course of the Snohomish River.
11. Rights of the general public to the unrestricted use of all the waters of a navigable body of water not only for the primary purpose of navigation, but also for corollary purposes; including (but not limited to) fishing, boating, bathing, swimming, water skiing and other related recreational purposes, as those waters may affect the tidelands, shorelands or adjoining uplands and whether the level of the water has been raised naturally or artificially to a maintained or fluctuating level, all as further defined by the decisional law of this state. (Affects all of the premises subject to such submergence)
12. Survey by Perteet Inc., dated July 2007, last updated April 2008, job no. S3157 , discloses the following:
 - a. Railroad tracks crossing property
 - b. Snohomish County PUD triple overhead power lines affecting property West of former Chicago Milwaukee St. Paul & Pacific Railroad right of way
 - c. Overhead power crossing lots 28, 29, and 38
 - d. Undedicated temporary access asphalt roadway between 41st Street Extension and 36th Street
 - e. Dirt and gravel roads connecting with adjoiners
 - f. Storm drains crossing lot 15
 - g. OP line crossing Parcel 32B
13. A document entitled "Memorandum of Property Disposition Agreement", executed by and between City of Everett and OliverMcMillan, LLC, OM Everett, Inc., and OMH Transfer Agent, LLC recorded , as Instrument No. of Official Records.
14. A document entitled "Reciprocal Temporary Construction and Access Easements Agreement", executed by and between OMH Transfer Agent, LLC, and OM Everett, Inc. and City of Everett recorded , as Instrument No. of Official Records.
15. A document entitled "Termination of Existing Easements and Non-Landfill Site Utility Easements and Access Agreement", executed by and between OM Transfer Agent, LLC and OM Everett, Inc. and City of Everett recorded , as Instrument No. of Official Records.
16. A document entitled "Public Amenities Dedication, Easement and Maintenance Agreement", executed by and between OMH Transfer Agent, LLC and Om Everett, Inc. and City of Everett recorded , as Instrument No. of Official Records.
17. Easement, including terms and provisions contained therein:
Recording Information:
In Favor of: City of Everett

For: landfill gas management system, leachate collection system,
groundwater monitoring system, and related utilities
Affects: as described and delineated in said document

18. Deed of Trust and the terms and conditions thereof.

Grantor/Trustor: OM Everett, Inc., a Washington corporation
Grantee/Beneficiary: Bank of America, N.A.
Trustee: First American Title Insurance Company
Amount: \$
Recorded:
Recording No.:

19. Unrecorded leases as follows:

City of Everett (Shelter)
City of Everett (Public Works Yard Lease)

20. A document entitled "Landfill Environmental Indemnification Agreement", executed by and between OM Everett, Inc. and City of Everett recorded , as Instrument No. of Official Records.

21. A document entitled "Former RR ROW/River Parcels Environmental and Indemnification Agreement", executed by and between OM Everett, Inc. and OMH Transfer Agent, LLC and City of Everett recorded , as Instrument No. of Official Records.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American Title Insurance Company expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

- 1.(a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to
 - (i) the occupancy, use, or enjoyment of the land;
 - (ii) the character, dimensions or location of any improvement now or hereafter erected on the land;
 - (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or
 - (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

- (a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.
- (b) "insured claimant": an insured claiming loss or damage.
- (c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.
- (d) "land": the land described or referred to in Schedule (A), and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A), nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.
- (e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions from Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.
- (g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either

- (i) an estate or interest in the land, or
- (ii) an indebtedness secured by a purchase money mortgage given to an insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing

- (i) in case of any litigation as set forth in Section 4(a) below,
- (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or
- (iii) if title to the estate or interest, an insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by an insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to an insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b) (i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or (ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPORTIONMENT.

If the land described in Schedule (A)(C) consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

11. LIABILITY NONCUMULATIVE.

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

14. ARBITRATION.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

16. SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

17. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at First American Title Insurance Company, 1 First American Way, Santa Ana, CA 92707, or to the office which issued this policy.



**First American Title Insurance Company
National Commercial Services**

**2101 Fourth Avenue, Suite 800
Seattle, WA 98121**

April 22, 2008

OMH Transfer Agent, LLC
EVERETT RIVERFRONT PROJECT
Everett, WA

Title Officer: Mike Cooper
Phone: (206)615-3107

Order Number: NCS-259174-WA1

Escrow Officer: Donna F. Koerber
Phone: (206)615-3021

Buyer: OMH Transfer Agent, LLC
Property: EVERETT RIVERFRONT PROJECT, Everett, WA

Attached please find the following item(s):

A Policy of Title Insurance

Thank You for your confidence and support. We at First American Title Insurance Company maintain the fundamental principle:

Customer First!

First American Title Insurance Company

Policy of Title Insurance



ISSUED BY
First American Title Insurance Company

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, FIRST AMERICAN TITLE INSURANCE COMPANY, a CA corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

First American Title Insurance Company

BY

PRESIDENT

ATTEST

SECRETARY



First American Title Insurance Company

**SECOND
PROFORMA POLICY
SCHEDULE A**

This is a Pro Forma Policy furnished to or on behalf of the party to be insured. It neither reflects the present status of title, nor is it intended to be a commitment to insure. The inclusion of endorsements as a part of the Pro Forma Policy in no way evidences the willingness of First American Title Insurance Company to provide any affirmative coverage shown therein.

There are requirements that must be met before a final policy can be issued in the same form as this Pro Forma Policy. A Commitment to insure setting forth these requirements should be obtained from the Company.

Amount of Insurance: \$to be determined

Policy Number: NCS-259174-WA1

Date of Policy: date and time of recording at

1. Name of insured:

OMH Transfer Agent, LLC, a Delaware limited liability company

2. The estate or interest in the land which is covered by this policy is:

Fee Simple

3. Title to the estate or interest in the land is vested in:

OMH Transfer Agent, LLC, a Delaware limited liability company

4. The land referred to in this policy is described as follows:

Real property in the City of Everett, County of Snohomish, State of Washington, described as follows:

LOT 13 AS DESCRIBED AND SHOWN ON CITY OF EVERETT BOUNDARY LINE ADJUSTMENT NO. 08-004, FILED UNDER AUDITOR'S FILE NO. 200804085006, RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

PARCEL 32A:

THAT PORTION OF LOT 17 OF BOUNDARY LINE ADJUSTMENT RECORD OF SURVEY RECORDED UNDER RECORDING NO. 200608215004 AND BOUNDARY LINE ADJUSTMENT NO. 05-008 RECORDED UNDER RECORDING NO. 200608210287, RECORDS OF SNOHOMISH COUNTY, WASHINGTON, LYING NORTH OF THE EASTERLY EXTENSION OF THE NORTH LINE OF 36TH STREET EXTENDED EASTERLY FROM THE SOUTHEAST CORNER OF BLOCK 2 TO THE SOUTHWEST CORNER OF BLOCK 1, ALL AS SHOWN ON J.S. SINES ACRE TRACTS, ACCORDING TO PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 11, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;
EXCEPT THOSE PORTIONS CONVEYED TO THE CITY OF EVERETT BY DEEDS RECORDED UNDER RECORDING NO.'S _____.

PARCEL 39:

TRACT 2 OF CITY OF EVERETT BLA NO 1474-04-002 RECORDED UNDER RECORDING NO 200402190061, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;

EXCEPT THAT PORTION CONVEYED TO THE CITY OF EVERETT BY DEED RECORDED UNDER RECORDING NO. _____.

SITUATE IN SNOHOMISH COUNTY, WASHINGTON.

PARCEL 40:

THE EAST HALF OF BLOCK 2 OF J.S. SINES ACRE TRACTS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 11, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;

TOGETHER WITH THAT PORTION OF VACATED ALLEY ATTACHED THERETO BY ORDINANCE NO. 484-77 RECORDED DECEMBER 16, 1977 UNDER RECORDING NO. 7712160175, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;

EXCEPT THAT PORTION OF ALL OF THE ABOVE CONVEYED TO THE CITY OF EVERETT BY DEED RECORDED UNDER RECORDING NO. _____.

SITUATE IN SNOHOMISH COUNTY, WASHINGTON.

PARCEL 41:

LOT 13 OF BOUNDARY LINE ADJUSTMENT RECORD OF SURVEY RECORDED UNDER RECORDING NO. 200608215004 AND CITY OF EVERETT BOUNDARY LINE ADJUSTMENT NO. 05-008 RECORDED UNDER RECORDING NO. 200608210287, RECORDS OF SNOHOMISH COUNTY, WASHINGTON.

PARCEL 42:

THAT PORTION OF GOVERNMENT LOT 3 IN SECTION 29, TOWNSHIP 29 NORTH, RANGE 5 EAST, W.M., IN SNOHOMISH COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:

BEGINNING ON THE SOUTH LINE OF SAID LOT 3, 1,019.4 FEET EAST OF THE SOUTHWEST CORNER OF SAID LOT, SAME BEING ON THE EAST LINE OF THE LAND CONVEYED TO SEATTLE AND MONTANA RAILROAD CO. BY WARRANTY DEED RECORDED APRIL 25, 1902 IN VOLUME 71 OF DEEDS, PAGE 77;

THENCE EAST ALONG SAID SOUTH LINE OF GOVERNMENT LOT 3, A DISTANCE OF 256.8 FEET TO THE WEST RIGHT OF WAY LINE OF EVERETT & MONTE CRISTO RAILWAY CO. AS CONVEYED BY DEED RECORDED MARCH 9, 1898 IN VOLUME 46 OF DEEDS, PAGE 40;

THENCE NORTHERLY ALONG THE WEST LINE OF SAID RIGHT OF WAY 641.6 FEET TO THE SOUTH LINE OF PLAT OF EVERETT LAND COMPANY'S 1ST ADDITION TO EVERETT, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 3 OF PLATS, PAGE 20, EXTENDED EASTERLY; THENCE WESTERLY ALONG SAID PRODUCTION OF THE SOUTH LINE OF SAID PLAT AND THE SOUTH LINE OF SAID PLAT, 165.39 FEET TO THE EASTERLY LINE OF THE RIGHT OF SAID SEATTLE & MONTANA RAILROAD CO.;

THENCE ANGLE LEFT 75°45' AND PROCEED SOUTHERLY ALONG THE EASTERLY LINE OF SAID RIGHT OF WAY, 314 FEET TO POINT OF CURVE TO THE LEFT;

THENCE ALONG SAID CURVE, RADIUS OF 1,392.69 FEET, A DISTANCE OF 341 FEET TO THE POINT OF BEGINNING.

SITUATE IN SNOHOMISH COUNTY, WASHINGTON.

PARCEL 43:

LOT 16 OF BOUNDARY LINE ADJUSTMENT RECORD OF SURVEY RECORDED UNDER RECORDING NO. 200608215004 AND CITY OF EVERETT BOUNDARY LINE ADJUSTMENT NO. 05-008 RECORDED UNDER RECORDING NO. 200608210287, RECORDS OF SNOHOMISH COUNTY, WASHINGTON;

EXCEPT THAT PORTION CONVEYED TO THE CITY OF EVERETT BY DEED RECORDED UNDER RECORDING NO. _____.

PARCEL 44:

THAT PORTION OF WALNUT STREET, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF BLOCK 805, EVERETT LAND COMPANY'S 1ST ADDITION TO EVERETT, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 3 OF PLATS, PAGE 20, IN SNOHOMISH COUNTY, WASHINGTON;
THENCE NORTH TO THE SOUTH LINE OF 33RD STREET;
THENCE EAST TO THE WEST LINE OF THE NORTHERN PACIFIC RAILROAD RIGHT OF WAY;
THENCE SOUTHERLY ALONG THE WESTERLY OF SAID RIGHT OF WAY TO A POINT EAST OF THE TRUE POINT OF BEGINNING;
THENCE WEST TO THE TRUE POINT OF BEGINNING.

SITUATE IN SNOHOMISH COUNTY, WASHINGTON.

PARCEL 45:

ALL THAT PART OF LOTS 17 TO 32, INCLUSIVE, BLOCK 805, PLAT OF THE EVERETT LAND COMPANY'S 1ST ADDITION TO EVERETT, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 3 OF PLATS, PAGE 20, LYING EASTERLY OF THE EASTERLY LINE OF THE RIGHT OF WAY OF ST PAUL, MINNEAPOLIS AND MANITOBA RAILWAY CO, WHICH EASTERLY RIGHT OF WAY LINE IS DESCRIBED IN VOLUME 79 OF DEEDS, PAGE 501, AS BEGINNING AT A POINT ON THE NORTH LINE OF SAID LOT 32 THAT IS 25.8 FEET WEST OF THE NORTHEAST CORNER BLOCK 805;
THENCE SOUTHWESTERLY PARALLEL TO AND 100 FEET DISTANT SOUTHEASTERLY FROM CENTERLINE OF SAID RAILWAY CO RIGHT OF WAY TO INTERSECT THE WEST LINE OF LOT 19 AT A POINT 65.3 FEET NORTH OF THE SOUTHWEST CORNER OF LOT 17, ALL IN SAID BLOCK 805.

PARCEL 46:

AN EASEMENT FOR SECONDARY FIRE AND EMERGENCY VEHICLE ACCESS ROAD AS ESTABLISHED BY SECONDARY FIRE ACCESS ROAD EASEMENT RECORDED UNDER RECORDING NO. _____.

PARCEL 47:

AN EASEMENT FOR UTILITIES AND STORM DRAINAGE AS ESTABLISHED BY RECIPROCAL ACCESS, UTILITIES AND TRAIL EASEMENT AND AGREEMENT RECORDED UNDER RECORDING NO. _____.

PARCEL 48:

AN EASEMENT FOR INGRESS, EGRESS, AND CONSTRUCTION AS ESTABLISHED BY RECIPROCAL
TEMPORARY CONSTRUCTION AND ACCESS EASEMENTS AGREEMENT RECORDED UNDER
RECORDING NO. _____.

SITUATE IN SNOHOMISH COUNTY, WASHINGTON.

APN:

SCHEDULE B

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. 2008 General Property Taxes, not yet due and payable.
2. Facility Charges, if any, including but not limited to hook-up, or connection charges and latecomer charges for water or sewer facilities of the City of Everett as disclosed by instrument recorded August 23, 1984 under recording no. 8408230225.
3. Easement, including terms and provisions contained therein:
Recording Information: 1533835, recorded May 21, 1962
In Favor of: Public Utility District No. 1 of Snohomish County
For: Electric transmission and/or distribution line, together with necessary appurtenances
Affects: Lot 13
4. Easement, including terms and provisions contained therein:
Recording Information: December 7, 1966, Recording No. 1917176
In Favor of: State of Washington
For: Storm sewer with necessary appurtenances
Affects: As therein provided

(Affects Parcel No.'s 39, 43, 44, and 45)
5. Reservations and exceptions, including the terms and conditions thereof:
Reserving: Minerals
Reserved By: Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a Wisconsin corporation
Recorded: July 29, 1977
Recording Information: 7707290103

(Affects Parcel 40)
6. Reservations and exceptions, including the terms and conditions thereof:
Reserving: Mineral Rights
Reserved By: Chicago, Milwaukee, St. Paul and Pacific Railroad Company
Recorded: March 31, 1981
Recording Information: 8103310230

(Affects Lot No. 13)

7. The Terms, Provisions and Easement(s) contained in the document entitled "Conditional Easement for Access and Utilities" recorded February 1, 2008 as Instrument No. 200802010052 of Official Records. By and between the City of Everett and Eclipse Properties, LLC, a Washington limited liability company.

Said instrument is a re-record of recording no(s). 200406040719.

(Affects Parcel 39)

8. Covenants, conditions, restrictions, reservations and/or easements:
Recorded: August 25, 2006
Recording No.: 200608250618
9. A document entitled "Operating Easement Agreement", executed by and between City of Everett, a Washington municipal corporation and BNSF Railway Company (formerly known as The Burlington Northern and Sante Fe Railway Company), a Delaware corporation recorded August 25, 2006, as Instrument No. 200608250621 of Official Records.
10. Right of the State of Washington in and to that portion, if any, of the property herein described which lies below the line of ordinary high water of the Snohomish River.
11. Any question as to the true location of the lateral boundaries of the tidelands.
12. Any question that may arise due to the shifting and/or changing in the course of the Snohomish River.
13. Rights of the general public to the unrestricted use of all the waters of a navigable body of water not only for the primary purpose of navigation, but also for corollary purposes; including (but not limited to) fishing, boating, bathing, swimming, water skiing and other related recreational purposes, as those waters may affect the tidelands, shorelands or adjoining uplands and whether the level of the water has been raised naturally or artificially to a maintained or fluctuating level, all as further defined by the decisional law of this state. (Affects all of the premises subject to such submergence)
14. Survey by Perteet Inc., dated July 2007, last updated April 2008, job no. S3157 , discloses the following:
- a. Public asphalt path crosses the property lines (Sheet 2-4)
 - b. Railroad tracks crossing property (Sheets 2-8)
 - c. Asphalt, and building encroachment over the Southerly property line (Sheet 7)
 - d. Overhead power serving Easterly adjoiner (Sheets 7 and 8)
 - e. Fence encroachment (Sheet 8)
 - f. Dirt and gravel roads connecting with adjoiners (Sheets 2, 3, 4, 6, 7 and 10)
 - g. Storm drain line crossing Northwesterly portion of Lot 13
 - h. OP line crossing Parcel 39

15. Rights of access to Easterly adjoiners described as Snohomish County tax account numbers 29-0529-001-006-00 and 29-0529-001-016-00. Upon conveyance of the premises described herein, it appears the only practical access to these properties from a public road is over and across said premises .
Also, Private Roadway and Crossing Agreement dated April 16, 1984 executed by and between Burlington Northern Railroad Company and Stuchell Enterprises, and asphalt driveway to Pacific Avenue over Parcel 43.
16. A document entitled "Memorandum of Property Disposition Agreement", executed by and between City of Everett and OliverMcMillan, LLC, OM Everett, Inc., and OMH Transfer Agent, LLC recorded , as Instrument No. of Official Records.
17. Terms, Covenants, Conditions and/or Provisions contained in easement serving said premises, as contained in Secondary Fire Access Road Easement:
Recorded:
Recording No.:
18. A document entitled "Reciprocal Temporary Construction and Access Easements Agreement", executed by and between OMH Transfer Agent, LLC, and OM Everett, Inc. and City of Everett recorded , as Instrument No. of Official Records.
19. A document entitled "Termination of Existing Easements and Non-Landfill Site Utility Easements and Access Agreement", executed by and between OM Transfer Agent, LLC and OM Everett, Inc. and City of Everett recorded , as Instrument No. of Official Records.
20. A document entitled "Reciprocal Access, Utilities and Trail Easement and Agreement", executed by and between OMH Transfer Agent, LLC and City of Everett recorded , as Instrument No. of Official Records.
21. A document entitled "Public Amenities Dedication, Easement and Maintenance Agreement", executed by and between OMH Transfer Agent, LLC and OM Everett, Inc. and City of Everett recorded , as Instrument No. of Official Records.
22. Easement, including terms and provisions contained therein:
Recording Information:
In Favor of: City of Everett
For: landfill gas management system, leachate collection system,
groundwater monitoring system, and utilities
Affects: as described and delineated in said document
23. Deed of Trust and the terms and conditions thereof.
Grantor/Trustor: OMH Transfer Agent, LLC, a Delaware limited liability company
Grantee/Beneficiary: Bank of America, N.A.
Trustee: First American Title Insurance Company
Amount: \$
Recorded:
Recording No.:
24. Unrecorded leases as follows:

City of Everett (Shelter)
City of Everett (Public Works Yard Lease)

25. A document entitled "Simpson Pad Environmental and Indemnification Agreement", executed by and between City of Everett and OMH Transfer Agent, LLC recorded , as Instrument No. of Official Records.
26. A document entitled "Mill Property Environmental and Indemnification Agreement", executed by and between City of Everett and OMH Transfer Agent, LLC recorded , as Instrument No. of Official Records.
27. A document entitled "Former RR ROW/River Parcels Environmental and Indemnification Agreement", executed by and between OMH Transfer Agent, LLC and OM Everett, Inc. and City of Everett recorded , as Instrument No. of Official Records.

The map attached, if any, may or may not be a survey of the land depicted hereon. First American Title Insurance Company expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

- 1.(a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to
 - (i) the occupancy, use, or enjoyment of the land;
 - (ii) the character, dimensions or location of any improvement now or hereafter erected on the land;
 - (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or
 - (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS.

The following terms when used in this policy mean:

- (a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.
- (b) "insured claimant": an insured claiming loss or damage.
- (c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of any public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.
- (d) "land": the land described or referred to in Schedule (A), and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A), nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.
- (e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions from Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.
- (g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either

- (i) an estate or interest in the land, or
- (ii) an indebtedness secured by a purchase money mortgage given to an insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.

The insured shall notify the Company promptly in writing

- (i) in case of any litigation as set forth in Section 4(a) below,
- (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or
- (iii) if title to the estate or interest, an insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE.

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by an insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to an insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE.

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b) (i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or (ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPORTIONMENT.

If the land described in Schedule (A)(C) consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY.

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY.

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

11. LIABILITY NONCUMULATIVE.

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. PAYMENT OF LOSS.

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. SUBROGATION UPON PAYMENT OR SETTLEMENT.

(a) The Company's Right of Subrogation.

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion which the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy which shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) The Company's Rights Against Non-insured Obligors.

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments which provide for subrogation rights by reason of this policy.

14. ARBITRATION.

Unless prohibited by applicable law, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is \$1,000,000 or less shall be arbitrated at the option of either the Company or the insured. All arbitrable matters when the Amount of Insurance is in excess of \$1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT.

(a) This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

16. SEVERABILITY.

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

17. NOTICES, WHERE SENT.

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at First American Title Insurance Company, 1 First American Way, Santa Ana, CA 92707, or to the office which issued this policy.